

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA)
)
4 vs.)
)
5 JACOBO ROZO POSSO) CASE NO. 1:18CR120-1
) Winston-Salem, North Carolina
) June 13, 2018
) 2:10 p.m.

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8 TRANSCRIPT OF THE **CHANGE OF PLEA HEARING**
9 BEFORE THE HONORABLE THOMAS D. SCHROEDER
 UNITED STATES DISTRICT JUDGE

10
11 APPEARANCES:

12 For the Government: FRANK J. CHUT, JR., AUSA
 Office of the U.S. Attorney
13 101 S. Edgeworth Street, 4th Floor
 Greensboro, North Carolina 27401

14
15 For the Defendant: MICHAEL S. PETTY
 P.O. Box 2298
16 Raleigh, North Carolina 27602

17
18 Court Reporter: BRIANA L. BELL, RPR
 Official Court Reporter
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 Winston-Salem, North Carolina 27120

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24 Proceedings recorded by mechanical stenotype reporter.
25 Transcript produced by computer-aided transcription.

P R O C E E D I N G S

MR. CHUT: Next, Your Honor, for guilty plea at arraignment is United States versus Jacobo Rozo Posso. Mr. Posso is represented by Mr. Petty, and this is 1:18CR120-1.

THE COURT: Good afternoon.

MR. PETTY: Good afternoon, Your Honor.

(The Defendant entered the courtroom.)

THE COURT: All right. Mr. Petty, are you ready to proceed?

MR. PETTY: I am, Your Honor.

THE COURT: This case has not yet been arraigned. Do you represent the Defendant, Jacobo Rozo Posso?

MR. PETTY: I do, Your Honor.

THE COURT: And have you discussed with him the charges pending against him in the superseding indictment?

MR. PETTY: Yes, sir, I have in depth.

THE COURT: And have also addressed with him the maximum penalties associated with those charges?

MR. PETTY: I have, Your Honor.

THE COURT: And do you believe he understands the charges against him and the maximum penalties he's facing?

MR. PETTY: He does, Your Honor.

THE COURT: All right. And have you had sufficient time to review the file in this case?

MR. PETTY: I have, Your Honor.

1 **THE COURT:** And my understanding is he's intending to
2 offer a guilty plea today; is that correct?

3 **MR. PETTY:** That is correct.

4 **THE COURT:** Do you believe that the Defendant
5 understands the nature of our hearing today, that is, a change
6 of plea hearing?

7 **MR. PETTY:** Yes, Your Honor, he does.

8 **THE COURT:** And my understanding is he's intending to
9 plead guilty to Counts Three, Six, and Eight of the superseding
10 indictment; is that correct?

11 **MR. PETTY:** That is correct.

12 **THE COURT:** Did anybody make any threats or promises
13 to your knowledge, other than those in his plea agreement, to
14 induce his plea today?

15 **MR. PETTY:** You're asking me?

16 **THE COURT:** Yes.

17 **MR. PETTY:** No, Your Honor.

18 **THE COURT:** Do you recommend that I accept his plea?

19 **MR. PETTY:** I do, Your Honor.

20 **THE COURT:** And do you believe that based on your
21 representation of your client that he's, in fact, offering his
22 plea today knowingly and voluntarily?

23 **MR. PETTY:** He is, Your Honor.

24 **THE COURT:** All right. Please administer the oath to
25 Mr. Posso.

1 (The Defendant was duly sworn.)

2 **THE COURT:** What is your full name, sir?

3 **THE DEFENDANT:** It's Jacobo Rozo Posso.

4 **THE COURT:** How old are you?

5 **THE DEFENDANT:** Twenty-four.

6 **THE COURT:** How far have you attended in school?

7 **THE DEFENDANT:** I was going to finish college on
8 May 12th.

9 **THE COURT:** Can you read and understand the
10 superseding indictment against you?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Can you read and understand your plea
13 agreement?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** Have you been treated recently for any
16 mental illness?

17 **THE DEFENDANT:** No.

18 **THE COURT:** Have you been treated recently for any
19 addiction to a narcotic drug?

20 **THE DEFENDANT:** No.

21 **THE COURT:** Now, I know you are in custody, and you
22 do not appear to me to be under the influence of any kind of a
23 substance, but I need to ask you: Are you currently under the
24 influence of any alcoholic beverage, any kind of drug, or any
25 kind of medication?

1 **THE DEFENDANT:** No.

2 **THE COURT:** So I've been asking you these questions.
3 Do you understand you are under oath, and if you answer any of
4 my questions falsely, your answers may later be used against
5 you in another prosecution for perjury or for making a false
6 statement?

7 **THE DEFENDANT:** Yes, I understand.

8 **THE COURT:** All right. And have you understood that
9 with respect to all of your answers so far?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** And I've asked you whether you can read
12 and understand the superseding indictment and the plea
13 agreement.

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** Can you?

16 **THE DEFENDANT:** Yes, I can.

17 **THE COURT:** And I asked you whether you are currently
18 under the influence of any kind of alcoholic beverage, drug, or
19 medication. And what's your answer to that?

20 **THE DEFENDANT:** I'm not.

21 **THE COURT:** Did you receive a copy of the superseding
22 indictment against you?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Have you read the current indictment with
25 your lawyer?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Do you understand the indictment and the
3 charges that are pending against you?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** Have you fully discussed the charges in
6 the indictment as well as your case in general with your
7 attorney?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Have you had sufficient time to speak
10 with your attorney about your case?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Are you satisfied that to this point in
13 time you have fully explored all the options available to you
14 in your case, including a discussion with your lawyer as to
15 whether or not you may have any defenses to the charges?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Are you fully satisfied with the services
18 your attorney has provided and the advice he has given you?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Now, I have a written plea agreement in
21 the case.

22 Mr. Petty, do you have a copy, sir?

23 **MR. PETTY:** I do, Your Honor.

24 **THE COURT:** Do you have an executed copy?

25 **MR. PETTY:** I do.

1 **THE COURT:** If you would show that to your client and
2 turn to page 11.

3 Mr. Posso, is that your signature on page 11 of the
4 plea agreement?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Did you read and fully understand the
7 plea agreement before you decided to be bound by it by signing
8 it?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** At this time I am going to ask Mr. Petty
11 to review with all of us the principal terms of your plea
12 agreement. I do want you to listen carefully, because when he
13 is finished, I am going to turn back to you and ask you some
14 questions about what he said, and I'll ask you some other
15 questions as well. My goal is to determine whether I believe
16 you understand all the terms of your agreement. All right?

17 **THE DEFENDANT:** Okay.

18 **THE COURT:** Mr. Petty, if you would highlight for us
19 the principal terms of the agreement, including the penalty
20 provisions and any plea bargaining.

21 **MR. PETTY:** Your Honor, we've pled in this to receipt
22 of child pornography and enticement of a minor. The receipt
23 carries a minimum of 5 years. The enticement carries a minimum
24 of 10 years. So at the very minimum, he is going to be in
25 prison for 10 years, and I've explained that to him. There's

1 -- really, the maximum is so high that -- without the
2 guidelines, but it's probably 30 years is what -- I think the
3 cap is off of it because we took this plea agreement, Your
4 Honor.

5 **THE COURT:** You say a minimum of 5 years. I thought
6 the mandatory minimum was 10; is that not right?

7 **MR. PETTY:** On receipt, I think it's 5. Maybe I'm
8 wrong, but I know it's 10 for enticement and 15 for production.
9 We didn't plead to the production, Your Honor. That was the
10 benefit -- the big benefit in my opinion to the plea agreement,
11 Your Honor.

12 **THE COURT:** Hold on just a minute.

13 (Pause in the proceedings.)

14 **THE COURT:** He is pleading to Counts Three, Six, and
15 Eight; correct?

16 **MR. PETTY:** Yes, sir.

17 **THE COURT:** Three is a coercion or enticement count,
18 Six is a coercion or enticement count, and Eight is the
19 possession count, which I believe has no mandatory minimum but
20 a maximum of 10 years; is that not correct?

21 **MR. PETTY:** I think you're right, Your Honor. I
22 stand corrected on that.

23 **THE COURT:** All right.

24 **MR. PETTY:** So we didn't plead -- there were two
25 counts of production in the superseding indictment. We didn't

1 plead to that. He's also -- the fines, a maximum of 250,000 as
2 to each count. And, Your Honor, we've agreed that he will be
3 examined by a Government psychiatrist or psychologist, and that
4 evaluation will be made available to the Court, Your Honor.

5 **THE COURT:** All right. It looks like you and the
6 Government have also agreed that a range of 15 to 30 years is
7 the appropriate disposition in the case, paragraph 5C?

8 **MR. PETTY:** Yes, Your Honor.

9 **THE COURT:** As well as --

10 **MR. PETTY:** Wait a minute. No, I didn't agree -- I'm
11 sorry. 10 years to 30 years, Your Honor, minimum.

12 **MR. CHUT:** Your Honor, the plea agreement on page 7,
13 it's paragraph 5C, provides for a -- that the United States and
14 the Defendant agree that a range of 15 to 30 years is the
15 appropriate disposition.

16 **THE COURT:** That's what's in the plea agreement.

17 **MR. PETTY:** Your Honor, I need to -- I made a mistake
18 then, Your Honor. I'm going to need to talk to my client about
19 this.

20 **THE COURT:** All right.

21 **MR. PETTY:** I'm sorry.

22 **THE COURT:** I'm going to stop right here then.

23 **MR. PETTY:** I made a mistake on this. I'm sorry,
24 Your Honor.

25 **THE COURT:** All right. Well, I am going to stop the

1 proceeding at this point then, if you your client need further
2 time to address the plea, and I will be here if you need me.

3 **MR. PETTY:** Okay. I need to call Mr. Iverson.

4 **THE COURT:** As I say, I will stop here. I'm here for
5 the afternoon, depending on what you all decide. Otherwise,
6 the plea agreement is between the Government and the Defendant,
7 and I cannot be involved in that and won't be.

8 **MR. PETTY:** I understand, Your Honor.

9 **THE COURT:** Thank you.

10 (Proceedings paused at 2:21 p.m.)

11 (Proceedings resumed at 3:48 p.m.)

12 (The Defendant was present.)

13 **MR. CHUT:** Your Honor, we'll return to United States
14 versus Jacobo Rozo Posso, 1:18CR120, Mr. Petty representing
15 Mr. Posso, and this is on for change of plea, Your Honor.

16 To update the Court, we have -- Mr. Petty and
17 Mr. Iverson have resolved the issue. There's a new plea
18 agreement that was filed, Your Honor, and we here now ready to
19 proceed. Again for the Court, the only change is the 11(c) --
20 Rule 11(c) portion was removed from the plea agreement, Your
21 Honor. So that paragraph is no longer in the plea agreement.

22 **THE COURT:** All right. So the plea agreement that
23 you're proceeding on now is the one that's filed June 13, which
24 is today?

25 **MR. PETTY:** Yes, Your Honor.

1 **MR. CHUT:** Yes, Your Honor, correct?

2 **THE COURT:** Okay. So I think what I'll do is just
3 start over then since we have a new plea agreement.

4 So let me ask you then, Mr. Petty, are you ready to
5 proceed?

6 **MR. PETTY:** Yes.

7 **THE COURT:** Have you had sufficient time to review
8 the file -- review the plea agreement and discuss it with your
9 client?

10 **MR. PETTY:** Yes, Your Honor.

11 **THE COURT:** All right. And do you believe your
12 client understands the charges that are pending against him and
13 the nature of the hearing today?

14 **MR. PETTY:** Yes, Your Honor.

15 **THE COURT:** And does he wish to enter plea of guilty?

16 **MR. PETTY:** Yes.

17 **THE COURT:** My understanding is he's intending to
18 plead guilty to Counts Three, Six, and Eight of the superseding
19 indictment; is that correct?

20 **MR. PETTY:** Yes, Your Honor.

21 **THE COURT:** Did anybody make any threat or promise
22 other than those contained in the plea agreement to induce his
23 plea?

24 **MR. PETTY:** No, Your Honor.

25 **THE COURT:** Do you recommend that I accept it?

1 **MR. PETTY:** I do, Your Honor.

2 **THE COURT:** Do you believe your client offers his
3 plea today knowingly and voluntarily?

4 **MR. PETTY:** Yes, Your Honor.

5 **THE COURT:** All right. Let's administer the oath
6 again.

7 (The Defendant was duly sworn.)

8 **THE COURT:** Mr. Posso, do you understand you are now
9 under oath, and if you answer any of my questions falsely, your
10 answers may later be used against you in another prosecution
11 for perjury or for making a false statement?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** What is your full name?

14 **THE DEFENDANT:** Jacobo Rozo Posso.

15 **THE COURT:** How old are you?

16 **THE DEFENDANT:** Twenty-four.

17 **THE COURT:** How far did you attend in school?

18 **THE DEFENDANT:** I was going to graduate this May.

19 **THE COURT:** Graduate from?

20 **MR. PETTY:** From NC State.

21 **THE DEFENDANT:** NC State.

22 **THE COURT:** Can you read and understand the
23 superseding indictment?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Have you read and understood your current

1 plea agreement?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** And by that I mean the plea agreement
4 that you've now submitted today, the new one?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** All right. Have you been treated for any
7 mental illness or addiction to a narcotic drug?

8 **THE DEFENDANT:** No.

9 **THE COURT:** And I know you have been in custody, but
10 I will ask you again: You do not appear to me to be under the
11 influence, but have you -- or are you, rather, under the
12 influence of any alcoholic beverage, any drug, or any
13 medication?

14 **THE DEFENDANT:** No.

15 **THE COURT:** Did you receive a copy of the superseding
16 indictment that's currently pending against you?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Did you read it with your lawyer?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Do you understand the indictment and the
21 charges against you?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Have you fully discussed the charges in
24 the superseding indictment as well as your case in general with
25 your attorney?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Have you had sufficient time to speak
3 with your lawyer about your case?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Are you satisfied fully that you've to
6 this point in time explored all of the options that are
7 available to you?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** And have you included in that a
10 discussion with your lawyer whether you may have any defenses
11 to the charges?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Are you fully satisfied with the services
14 your attorney has provided and the advice he has given you?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Now, I have a written plea agreement
17 that's entered as of today.

18 Do you have an executed copy of that one, Mr. Petty?

19 **MR. PETTY:** I do, Your Honor.

20 **THE COURT:** If you would turn to the last page of
21 that, page 10, and show that to your client.

22 Mr. Posso, is that your signature on page 10 of the
23 June 13, 2018, plea agreement?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** And did you read and fully understand all

1 the terms of this agreement before you decided to sign it?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** So, Mr. Petty, if you would at this time
4 please review with us the principal terms of this plea
5 agreement.

6 **MR. PETTY:** Your Honor, he's agreed to plead guilty
7 to Counts Three, Six, and Eight of the superseding indictment,
8 and he will be sentenced to a term of not less than 10 years
9 nor more than life as to each count, Your Honor.

10 **THE COURT:** As to two of the counts.

11 **MR. PETTY:** As to two, it's no more than life. It's
12 10 to life as to two of them and 10 to whatever the guideline
13 range would be on the receipt, I think, Your Honor.

14 **THE COURT:** Paragraph 2A says that as to Counts Three
15 and Six, he'll be -- he's subject to a term of imprisonment of
16 not less than 10 nor more than life, and paragraph 2B says that
17 he's subject to a sentence of not more than 10 years.

18 **MR. PETTY:** Yes, Your Honor. I'm sorry. I was
19 mistaken.

20 **THE COURT:** Let's follow the plea agreement. What
21 else?

22 **MR. PETTY:** And he could be -- the maximum fine is
23 \$250,000 as to each count, Your Honor; that he could be
24 sentenced to probation of not less than 5 years, but he could
25 be sentenced to probation for life after he's released.

1 **THE COURT:** You mean supervised release, not
2 probation?

3 **MR. PETTY:** Yes, Your Honor.

4 **THE COURT:** All right.

5 **MR. PETTY:** He understands that the sentence to be
6 imposed upon him is within the discretion of the sentencing
7 court subject to the statutory minimum and mandatory minimum
8 penalties; that the Court is not bound by the range of the
9 United States sentencing guidelines, but that the Court is
10 required to consult these guidelines and take them into
11 account, Your Honor. In doing so, the Court will first
12 calculate, after making the appropriate findings of fact, the
13 sentencing range prescribed by the guidelines and then will
14 consider the range, as well as other relevant factors set
15 forth, Your Honor.

16 And he is a United States citizen. So I don't think
17 that his immigration status will be change -- will be affected
18 by that.

19 **THE COURT:** All right.

20 **MR. PETTY:** Your Honor, that he's required to
21 register as a sex offender in any state that he may reside,
22 Your Honor.

23 And he agrees pursuant to the North Carolina General
24 Statutes that whatever county he resides in after he's released
25 that he will provide verification to the probation office of

1 such registration, Your Honor, and that if he moves, he may be
2 required to register pursuant to the state laws of the new
3 state, Your Honor.

4 He gives up -- by pleading to this, he gives up his
5 right to plead not guilty and not to be compelled to
6 incriminate himself, to confront and cross-examine the
7 witnesses against him, and to have the jury or judge determine
8 his guilt, Your Honor, and the other constitutional rights
9 which attend a defendant on trial in a criminal case, Your
10 Honor.

11 And he's abandoning any interest he has in anything
12 seized, Your Honor.

13 Also, I explained any of the computers or anything
14 like that he has -- he's giving up his right to try to claim
15 that the Government has to give these back to him. I explained
16 that to him.

17 Your Honor, I also explained to him that he will get
18 a two-level reduction, and the offense level will be higher
19 than a 16, and that the United States will recommend a further
20 decrease by one additional level, but that you don't have to do
21 that. That's in your discretion, I think, Your Honor.

22 I also explained to him that he's got to cooperate --
23 participate in a psychosexual evaluation, Your Honor, and he's
24 got to answer all these questions truthfully and fully, Your
25 Honor.

1 And, also, I explained to him that he's -- he
2 expressly waives his right to appeal the conviction and
3 whatever sentence is imposed on any ground, Your Honor, and to
4 further waive any right to contest the conviction or the
5 sentence in any post-conviction proceeding, Your Honor, except
6 that he could attack it on ineffective assistance of counsel or
7 prosecutorial misconduct not known to the Defendant at the time
8 of his guilty plea, Your Honor.

9 I explained to him that all monetary penalties are
10 due immediately, and the Defendant agrees that if the Court
11 imposes a schedule of payments, the schedule of payments shall
12 be merely a schedule of minimum payments and shall not be a
13 limitation to -- on the methods available to the United States
14 to enforce or collect that judgment, Your Honor.

15 And I also explained to him that the United States
16 and he has -- we reserve the right to bring to the Court's
17 attention any facts deemed relevant for the purposes of
18 sentencing, and that I will be vigorously doing that, Your
19 Honor, through my memorandum that I will be filing with the
20 Court in response to the presentence report, Your Honor.

21 And I explained to him that no agreements
22 representations or understandings have been made between the
23 parties in this case other than those which are explicitly set
24 forth in this plea agreement, and none will be entered into
25 unless executed in writing and signed by the parties, Your

1 Honor.

2 **THE COURT:** All right. There's also a 5,000-dollar
3 special assessment for each of the counts as well; correct?

4 **MR. PETTY:** Yes, sir.

5 **THE COURT:** All right. Does the plea agreement
6 contain the complete agreement between the Government of the
7 United States and your client?

8 **MR. PETTY:** It does, Your Honor.

9 **THE COURT:** Thank you.

10 So, Mr. Posso, you've heard your attorney review the
11 key terms of your plea agreement. Is that, in fact, your
12 understanding of your plea agreement?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Do you understand all the terms of your
15 plea agreement?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Does your plea agreement contain the
18 entire agreement between you and the Government of the United
19 States in your case?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Have you had sufficient opportunity to
22 read the plea agreement and to discuss it with your attorney?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Do you have any questions at this time
25 for either your attorney, with whom you can speak privately, or

1 me about any portion of your plea agreement?

2 **THE DEFENDANT:** No.

3 **THE COURT:** Do you understand that in your plea
4 agreement the Government has agreed to make a recommendation to
5 the Court; that is, in paragraph 5B of the plea agreement, the
6 Government has agreed to recommend that if you qualify for what
7 is known as acceptance of responsibility and your offense
8 level, as calculated under the sentencing guidelines, is 16 or
9 greater, then in that case the Government will recommend that
10 you receive an additional one-level decrease in your offense
11 level?

12 Do you understand that?

13 **THE DEFENDANT:** Yes, I understand.

14 **THE COURT:** Do you understand that it is only a
15 recommendation from the Government that is not binding on the
16 Court?

17 **THE DEFENDANT:** Yes, I understand.

18 **THE COURT:** Do you understand that if, for any
19 reason, that the Court were to reject that recommendation, the
20 Court could impose a sentence that may be more severe than you
21 may have anticipated but without permitting you to withdraw
22 your plea?

23 **THE DEFENDANT:** Yes, I understand.

24 **THE COURT:** All right. Did anybody make any threats
25 or promises to you other than those contained in the plea

1 agreement in an effort to persuade you to plead guilty?

2 **THE DEFENDANT:** No, sir.

3 **THE COURT:** Has anybody in any way attempted to force
4 you to plead guilty today against your wish?

5 **THE DEFENDANT:** No, sir.

6 **THE COURT:** Are you a citizen of the United States?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you understand that as a citizen, if I
9 do accept your plea of guilty, then you will be adjudged guilty
10 of the offenses, and you may lose certain valuable civil rights
11 as a result, which would include the right to vote, the right
12 to hold public office, the right to serve on a jury, and the
13 right to possess any kind of a firearm?

14 **THE DEFENDANT:** Yes, sir, I understand.

15 **THE COURT:** Let me review with you the maximum
16 penalties that are provided for if I accept your plea of
17 guilty.

18 You're intending to plead guilty to Counts Three,
19 Six, and Eight of the superseding indictment. Counts Three and
20 Six each charge coercion or enticement in violation of Title 18
21 of the U.S. Code, Section 2422(b).

22 As to each of those separately, the maximum penalties
23 are imprisonment of not less than 10 years up to a period of
24 life -- in other words, there's a mandatory minimum sentence of
25 10 years up to life -- a fine of not more than \$250,000 or

1 twice the gross gain or loss caused by the violation, whichever
2 is greater, a period of supervised release of not less than 5
3 years up to life -- in other words, a period of supervision
4 after imprisonment of at least 5 years, a mandatory minimum of
5 5 years, up to life -- the Court can order the payment of
6 restitution, there is a 100-dollar special assessment, there's
7 another 5,000-dollar special assessment unless you qualify as
8 an indigent, and you will be required to register as a sex
9 offender in every jurisdiction applicable.

10 As to Count Eight, which charges possession of
11 material containing an image of child pornography in violation
12 of Title 18 of the U.S. Code, Section 2252A(a) (5) (B), the
13 maximum penalties are imprisonment up to but not more than 10
14 years, a fine of not more than \$250,000 or twice the gross gain
15 or loss, whichever is larger, a period of supervised release of
16 not less than 5 years up to a maximum of life; in other words,
17 a mandatory minimum of 5 years of supervision up to a maximum
18 of life. The Court can order forfeiture of any visual
19 depiction connected with the offense or any material containing
20 such a visual depiction and any property constituting or
21 traceable to any proceeds or profits from the offense and any
22 property used or intended to be used to commit or promote the
23 offense. There's mandatory payment of restitution. There is a
24 100-dollar special assessment. There's also the 5,000-dollar
25 special assessment in these sex offender cases unless you

1 qualify as an indigent, and you again will be required to
2 register as a sex offender in all applicable jurisdictions.

3 Do you understand all those various potential
4 penalties?

5 **THE DEFENDANT:** Yes, sir, I understand.

6 **THE COURT:** Now, as to the penalty of supervised
7 release, do you understand that following any term of
8 imprisonment, you will be placed on a period of supervision by
9 the Court?

10 **THE DEFENDANT:** Yes, I understand.

11 **THE COURT:** Do you understand that during your
12 supervision, if you violate any conditions of supervision, you
13 could be sent back to prison for a period of time?

14 **THE DEFENDANT:** Yes, I understand.

15 **THE COURT:** Do you understand to your satisfaction
16 all possible penalties and consequences of your plea of guilty?

17 **THE DEFENDANT:** Yes, I understand.

18 **THE COURT:** Now, I've just described to you the
19 various penalties that can be imposed in your case. It will be
20 up to the Court to determine your actual sentence at a
21 sentencing hearing, which will occur at a later date.

22 The U.S. Sentencing Commission has created what are
23 known as sentencing guidelines and related policy statements
24 the Court must consider in determining a sentence in your case.

25 Are you aware of that?

1 **THE DEFENDANT:** Yes, I understand.

2 **THE COURT:** I cannot determine your sentencing
3 guideline range until your written presentence report has been
4 prepared by the U.S. Probation Office. Once the report is
5 prepared, you'll be given an opportunity to review it with your
6 lawyer, and you can file any objections you may have to the
7 report, including any objection you may have to the application
8 of the sentencing guidelines in your case.

9 Do you understand?

10 **THE DEFENDANT:** Yes, sir, I understand.

11 **THE COURT:** Now, it may be that Mr. Petty or others
12 may have given an estimate of what they believe your sentencing
13 guideline range or your sentence may be. If so, do you
14 understand that any such estimates are only estimates and may
15 be different from the actual guidelines calculated by the Court
16 and the sentence imposed by the Court?

17 **THE DEFENDANT:** Yes, sir, I understand.

18 **THE COURT:** Do you understand that once the Court
19 determines your guideline range, it will not be required to
20 follow it because the guidelines are advisory and not binding?

21 **THE DEFENDANT:** Yes, sir, I understand.

22 **THE COURT:** That means that the Court must consider
23 the advisory guidelines, along with all the other sentencing
24 factors set out in Title 18 of the U.S. Code in Section
25 3553(a). Do you understand?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you understand that the Court does
3 have the authority to impose a sentence that is either more or
4 less severe than what the guidelines may recommend?

5 **THE DEFENDANT:** Yeah.

6 **THE COURT:** Do you understand that parole has been
7 abolished; so if you are sentenced to prison, you would not be
8 released early on parole?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Do you understand that you or the
11 Government may have the right to appeal any sentence imposed?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Let me review now your rights under our
14 Constitution.

15 As you stand before the Court, as you do at this
16 time, and before I accept any plea from you, you have the right
17 to plead not guilty to any or all of the charges against you
18 and to persist in that plea.

19 You have the right to demand a trial by a jury. At
20 any trial, you would be presumed to be innocent, and the United
21 States would bear the burden of proving your guilt beyond a
22 reasonable doubt. That means the United States is required to
23 prove each and every element of the crime charged beyond a
24 reasonable doubt before you could be found guilty.

25 Do you understand?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** You also have the right to the assistance
3 of a lawyer and, if necessary, to have the Court appoint
4 counsel at trial and at every other stage of the proceedings.

5 You have the right to see and hear all the witnesses,
6 the right to confront them, and you or your lawyer has the
7 right to cross-examine them.

8 You have the right to testify in your own defense, if
9 you choose to do that; but nobody can force you to do that. As
10 a result, if you choose not to testify, then that decision will
11 never be held against you.

12 You also have the right to present evidence, and you
13 can issue subpoenas that would require witnesses to attend to
14 testify in your defense. If you did not present any evidence
15 at all, however, that fact cannot be used against you.

16 Do you understand all of these rights that I've
17 described?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Do you understand further that -- do you
20 understand further that by entering a plea of guilty, that once
21 I accept it, then there will be no trial, and you will have
22 given up forever, not only your right to a trial, but all of
23 these other rights associated with a trial that I've described?

24 **THE DEFENDANT:** Yes, sir, I understand.

25 **THE COURT:** Do you understand that if I do accept

1 your plea of guilty, it is highly unlikely that the decision
2 would ever be reversed?

3 **THE DEFENDANT:** Yes, I understand.

4 **THE COURT:** Now, I mentioned that one of the rights
5 you have is you or the Government may have the right to appeal
6 any sentence in your case, but do you understand that in
7 paragraph 5E of your plea agreement you're significantly
8 limiting your appeal rights; that is, in exchange for the
9 Government's agreement to dismiss the remaining counts of the
10 superseding indictment, you're expressly waiving your right to
11 appeal your conviction and sentence on any ground, including
12 any appeal right that's conferred under Title 18 of the U.S.
13 Code, Section 3742(a), and you're further waiving any right to
14 contest your conviction or sentence in any post-conviction
15 proceeding, which we sometimes call a habeas proceeding,
16 including any such proceeding under Title 28 of the U.S. Code,
17 Section 2255, with the exception that you do preserve your
18 right to appeal or collaterally attack based on grounds of
19 ineffective assistance of your lawyer, any misconduct by the
20 prosecutor not known to you at the time of your plea, any
21 sentence that exceeds the statutory maximum, and any sentence
22 based on an unconstitutional factor, such as race, religion,
23 national origin, or gender?

24 Do you understand that?

25 **THE DEFENDANT:** Yes, sir, I understand.

1 **THE COURT:** All right. If you were to put the
2 Government to the burden of proof in this case, it would be
3 required to prove the elements of these offenses to a jury of
4 12 beyond a reasonable doubt, which means each and every juror
5 would have to agree as to every element of the offense before
6 you could be found guilty. Do you understand?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** So let me review with you the elements of
9 the offenses to which you are intending to plead guilty, and
10 then I have some more questions for you.

11 In Count Three, the Government is required to prove
12 the following elements -- and before I read these, let me ask
13 counsel: There's no indication that the victims were under the
14 age of 14, which would have a separate penalty offense; is that
15 correct?

16 **MR. PETTY:** That's correct.

17 **THE COURT:** Okay.

18 **MR. CHUT:** That's correct, Your Honor.

19 **THE COURT:** All right. So the Government would be
20 required to prove the following:

21 That in or about August of 2017 -- give me just a
22 moment -- you knowingly persuaded, induced, or enticed, or
23 coerced an individual to engage in sexual activity that
24 constitutes a crime; that is, the Government charges indecent
25 liberties with a child under North Carolina law and sexual

1 exploitation of children under Title 18 of the U.S. Code
2 Section 2251(a). And the Government must prove that at the
3 time of the attempted persuasion, inducement, enticement, or
4 coercion, the individual victim was under the age of 18 and
5 that, in doing so, you used the mail or any facility or means
6 of interstate commerce.

7 As to Count Six, the Government would be required to
8 prove that on or about October 4, 2017, here in the Middle
9 District, you knowingly persuaded, induced, enticed, or coerced
10 an individual to engage in sexual activity that constitutes a
11 crime in North Carolina law, that is, indecent liberties with a
12 child under North Carolina law and sexual exploitation of
13 children under Title 18 of the U.S. Code, Section 2251(a).
14 Also, that at the time of the persuasion, inducement,
15 enticement, or coercion, the individual victim was under the
16 age of 18 and that, in so doing, you used to mail or any
17 facility or means of interstate commerce.

18 And as to Count Eight, which charges possession of an
19 image of child pornography, the Government would be required to
20 prove that on or about March 1, 2018, in the Middle District of
21 North Carolina, you knowingly possessed any book, magazine,
22 periodical, film, videotape, computer disk, or any other
23 material that contained an image of child pornography that had
24 been mailed or shipped or transported using any means or
25 facility of interstate commerce or foreign commerce or in or

1 affecting interstate or foreign commerce by any means,
2 including by a computer, or that was produced using materials
3 that had been mailed, shipped, or transported in or affecting
4 interstate or foreign commerce by any means, including a
5 computer.

6 And, finally, the Government must prove that you knew
7 at the time that the material contained child pornography.

8 Do you understand the elements of each of these
9 offenses as I have reviewed them with you?

10 **THE DEFENDANT:** Yes, sir, I understand.

11 **THE COURT:** And how do you plead to each of these
12 offenses?

13 **THE DEFENDANT:** Guilty.

14 **THE COURT:** Are you pleading guilty, Mr. Posso,
15 because you are, in fact, guilty of each of these offenses?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand that by pleading guilty
18 you're admitting the elements of each of these offenses?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Bear with me just a moment.

21 (Pause in the proceedings.)

22 **THE COURT:** Do you understand that in your plea
23 agreement, in paragraph 2E, you're also agreeing to pay
24 restitution, not only to any victim of the offenses, but any
25 victims harmed by what is known as your relevant conduct, as

1 that term is defined by the sentencing guidelines?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** And you're also agreeing in your plea
4 agreement to cooperatively participate in a psychosexual
5 evaluation. Do you understand that?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** It is the finding of this Court in Case
8 1:18CR120-1, United States of America versus Jacobo Rozo Posso,
9 that Mr. Posso is fully competent and capable of entering an
10 informed plea, that he understands the charges against him and
11 the consequences of his plea, and his plea of guilty is knowing
12 and voluntary.

13 I have a factual basis that's been filed in the case.
14 Did you receive a copy, Mr. Petty?

15 **MR. PETTY:** I did, Your Honor.

16 **THE COURT:** Have you reviewed that with your client?

17 **MR. PETTY:** I have, Your Honor.

18 **THE COURT:** Do you have any objections to it?

19 **MR. PETTY:** No, Your Honor.

20 **THE COURT:** All right. Mr. Posso, did you read the
21 factual basis?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you agree with your lawyer: You have
24 no objection to the contents of it?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** All right. Give me just a moment. I've
2 read this previously.

3 (Pause in the proceedings.)

4 **THE COURT:** All right. I've read the factual basis.
5 I will find that it does provide an independent basis in fact
6 for each of the essential elements of the offenses. So I will
7 accept the plea, and the Defendant is now adjudged guilty of
8 Counts Three, Six, and Eight of the superseding indictment.

9 The next step then, Mr. Posso, is the preparation of
10 a written presentence report by the U.S. Probation Office. You
11 will be asked to provide information for the report, and your
12 attorney may be present for your interview.

13 When the report is completed, you'll have the
14 opportunity to review it and file any objections if you
15 disagree with any aspect of the report, including the
16 application of the sentencing guidelines recommended by the
17 probation office. If there are objections that are not
18 resolved by the time of your sentencing, I will resolve those
19 first, and then I'll determine a sentence in your case.

20 You'll have the opportunity to speak at sentencing,
21 if you wish, but you're not required to. You enjoy the right
22 to remain silent.

23 The Court directs the preparation of a written
24 presentence report. I'm also ordering a psychosexual
25 evaluation pursuant to the agreement of the Defendant in his

1 plea agreement; and as a result, I'm going to set this for
2 sentencing in October. It will be set for Tuesday, October 16,
3 2018, at 9:30 a.m. here in Winston-Salem in Courtroom Number 2.

4 Anything further I need to address?

5 **MR. PETTY:** No, Your Honor.

6 **MR. CHUT:** No, thank you. That's business for the
7 United States.

8 **THE COURT:** We'll adjourn Court.

9 **MR. PETTY:** Thank you for your patience.

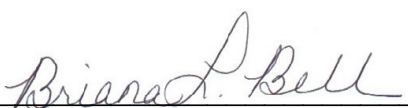
10 (END OF PROCEEDINGS AT 4:22 P.M.)

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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Bell, Official Court Reporter, certify
7 that the foregoing transcript is a true and correct transcript
8 of the proceedings in the above-entitled matter.
9

10 Dated this 15th day of January 2020.
11

12 
13 Briana L. Bell, RPR
14 Official Court Reporter
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